

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU

&

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

TRC.No. 491 of 2001

ORDER DATED 21.11.2000 IN TA.292/1997 OF THE KERALA
AGRICULTURAL INCOME TAX & SALES TAX APPELLATE TRIBUNAL,
ADDITIONAL BENCH-II, PALAKKAD
.....

REVISION PETITIONER/REVENUE:

STATE OF KERALA,
REPRESENTED BY DEPUTY COMMISSIONER (LAW)
DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER MR.VINOD CHANDRAN

RESPONDENT/ASSESSEE:

M/S.THARUTHU AND COMPANY,
R.S.ROAD,
THRISSUR.

BY ADV. SRI.K.K.VIJAYARAGHAVAN
SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM
SRI.FRANKUR D.JAYAN
SRI.DEEPSUR D.JAYAN
SRI.K.P.PRADEEP (PAYYANNUR)
SRI.SHANMUGHAM D. JAYAN
SMT.P.K.MAYA DEVI

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD
ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

H.L.DATTU, C.J. & K.M.JOSEPH, J.

T.R.C.No.491 of 2001

Dated, this the 19th day of December, 2007

ORDER

H.L.Dattu, C.J.

The Revenue being aggrieved by the orders passed by the Sales Tax Appellate Tribunal in T.A.No.292 of 1997 dated 21.11.2000 is before us in this tax revision case.

(2) The Revenue has framed the following questions of law for our consideration and decision. They are as under:

“1) Does the tribunal entertained claim for the first time the assessee never had before the authorities below and that too without any new material.

2) Is the assessee entitled to make a claim against the books of account maintained by them, which they claimed to be true and correct before all the lower authorities.

3) Is the Tribunal justified in fixing the addition at Rs.4,00,000/- without any reason of material basis?

4) Whether the order of the Tribunal is justified with the facts and circumstances of the case?”

(3) The assessee is a dealer registered under the provisions of the Kerala General Sales Tax Act, 1963 ('the Act' for short). He is a dealer in fire works and chemicals. The assessment year in question is 1994-95.

(4) The business premises of the assessee was inspected by the intelligence wing of the Department on 29.3.1995 and on such inspection, according to the department, certain incriminating documents were seized

from the possession of the dealer. With the help of those documents the intelligence wing of the Department is of the opinion that the assessee has suppressed both purchases as well as the sales effected by him.

(5) After such inspection, it appears, that the assessee had compounded the offence departmentally in lieu of the prosecution proceedings.

(6) The assessee for the assessment year 1994-95 had filed his annual returns and in that had conceded the total and taxable turnover of Rs.25,11,627.20 and 17,09,652.35 respectively. The assessing authority after rejecting the returns so filed by the assessee has proceeded to complete the assessment by way of best judgment assessment and in that has made an addition of 50% towards purchases and sales effected by the dealer and thereafter has quantified the tax liability for the assessment year in question.

(7) Aggrieved by the said order passed by the assessing authority, the assessee had carried the matter in appeal before the first appellate authority. The first appellate authority while confirming the orders passed by the assessing authority and further being of the opinion that the addition of 50% made by the assessing authority is on the higher side, has reduced the same by making an addition of 35% of the suppression of the total purchases and sales effected by the dealer and accordingly has directed the assessing authority to re-quantify the tax liability and issue a fresh demand notice.

(8) Aggrieved by the order so passed by the first appellate authority, the assessee had carried the matter in second appeal before the Tribunal in T.A.No.292 of 1997. Before the Tribunal, it appears, for the first time that the assessee had raised a contention that it is only because of the misclassification of the goods that the intelligence wing of the Department had come to the

conclusion that there was suppression of purchases and sales by the dealer. However, the Tribunal taking a very sympathetic view of the matter, has reduced the additions made by the assessing authority and had further directed the assessing authority to make an addition in a sum of Rs.4,00,000/- to the conceded taxable turnover of the dealer.

(9) Aggrieved by the orders so passed by the Tribunal, the Revenue is before us in this tax revision case.

(10) Sri.Vinod Chandran, learned Government Pleader appearing for the Revenue would submit that for the first time the assessee had raised a contention before the tribunal that in view of the misclassification of the goods the intelligence wing of the Department had come to the conclusion that there was suppression of purchases and sales effected by the dealer.

(11) The Tribunal, in fact, has not accepted the contention of the assessee. But for the purpose of reducing the addition made by the assessing authority has thought it fit that the petitioner being a small time dealer, the addition could be in a sum of Rs.4,00,000/- to the conceded turnover of the dealer.

(12) The assessing authority has passed the best judgment assessment. That has been modified by the first appellate authority by yet another best judgment assessment and the Tribunal once again has passed an order passing yet another best judgment assessment and these best judgment assessments are the subject matter of the revision petition. This Court in exercise of its powers under Section 41 of the Act need not pass one more best judgment assessment. These are cases where estimations are made by the assessing authority and those estimations are either modified or reduced by the

superior forums and these are entirely based upon the facts and circumstances of each case. This Court in exercise of its revisional powers is not expected to answer on the questions of facts. The parameters of the jurisdiction of this Court under Section 41 of the Act is only to consider a legal issue which has been failed to be decided by the Tribunal or has been erroneously decided. Since we have come to the conclusion that the orders passed by the tribunal is purely based on facts it will not be appropriate for this Court to entertain this revision petition and pass one more best judgment assessment order

(13) In that view of the matter, while rejecting the revision petition filed by the Revenue, we confirm the orders passed by the tribunal. Accordingly, we answer the questions of law framed by the Revenue against the Revenue and in favour of the assessee.

Ordered accordingly.

Sd/-
(H.L.DATTU)
CHIEF JUSTICE

Sd/-
(K.M.JOSEPH)
JUDGE

vns

- true copy -